

STATEMENT OF

THE STATE OF NEW YORK

BEFORE THE

HOUSE SUBCOMMITTEE ON

FINANCE AND HAZARDOUS MATERIALS

MARCH 7, 1997

Good morning, Congressman Oxley and other members of the Subcommittee. I want to take this opportunity to welcome you to New York State, and I hope that you enjoy your visit to this great metropolis. Certainly, Tom Manton is an excellent tour guide to show you the diversity that New York City has to offer.

Congressman Manton, I want to extend a special thanks to you, as ranking minority member on the Subcommittee on Commerce, Trade and Hazardous Materials. I appreciate your efforts in bringing the Subcommittee to New York City. Finally, Pfizer Pharmaceuticals deserves the thanks of the State for making its site available for your review this morning.

I can't thank the Subcommittee enough for providing New York State with an opportunity to share with you our thoughts on the remediation of hazardous waste sites in New York State, and on how best to take down the barriers to these projects.

This issue goes to the heart of Governor Pataki's hopes and dreams for the Empire State.

Under Governor Pataki's direction, we have recognized that this State has suffered for too long from the problems of the past.

Governor Pataki and I believe that New York has so much to offer to this great Nation -- but only if we could put all of our muscle into rebuilding the Empire State.

Hazardous waste sites dot all but one county in New York State. The fact that too many companies have chosen to abandon sites, rather than clean them up and bring them back into productive use, is testimony to the fact that barriers to remediating these sites do exist.

In New York State, we have worked hard to remove these barriers. We've learned from the experience of our Superfund program.

We've been innovative, creative, and successful in bringing abandoned sites back into productive use. I want to bring to your attention today some of the successes that have helped to make New York a recognized national leader in hazardous waste site remediation.

Summary of Testimony

I am here today to ask, on behalf of New York State, for Congressional assistance with the remediation of hazardous waste sites. I will provide you with a brief overview of New York's Voluntary Cleanup and Brownfields programs -- two new initiatives that are having a remarkable success at speeding the cleanup of industrial sites. I also will provide recommendations that New York believes you should consider in your efforts to reauthorize and reform CERCLA and RCRA.

CERCLA, while well-intentioned, has not lived up to its goal of ensuring swift, effective cleanups of sites that are contaminated with hazardous substances. Of particular importance to New York State is the need for flexibility in the federal statute's approach to site cleanups, as the best means of ensuring that they occur expeditiously and in a cost effective manner.

New York, like many other states, is emphasizing Voluntary and Brownfields cleanups as a common sense approach in many cases where site remediation is necessary. To most effectively implement our programs, we need a federal release from liability. Without this provision in federal law, we face the serious prospect with each potential cleanup, that responsible parties, potential purchasers, or

municipalities will be reluctant to remediate sites where they could later be held liable for federal cleanups.

New York's Voluntary Cleanup Program

New York State's Voluntary Cleanup program is proof that site cleanups can create economic benefits and opportunities. In some areas of the country, this type of program is accurately described as "land recycling". But regardless of which name is used to describe these programs, the intent is the same.

As in other states, our Voluntary Cleanup Program is enabling businesses, industries, financial institutions and municipalities to quickly clean up sites without using taxpayer dollars and reducing development pressures on pristine sites.

Prior to implementation of the Voluntary Cleanup Program, developers and investors were reluctant to clean up contaminated properties because of potential liabilities involved. Not only were contaminated properties left vacant, but development expanded into formerly pristine areas.

Under New York's Voluntary Cleanup Program, developers and others can agree to clean up contaminated sites including inactive hazardous waste sites, petroleum-contaminated sites and solid waste disposal sites.

Volunteers enter into an agreement to investigate the site and work with DEC to develop a cleanup plan. The contemplated use of the site is established at the beginning of the process, and the volunteer is required to clean up the site to a level consistent with the safe use of the property for that purpose.

All work is carried out under State oversight; the volunteer pays State oversight costs. Once the site-specific cleanup levels are reached, the volunteer receives a release from State liability for the contaminants addressed in the work plan. This is a win-win situation. The property is cleaned up more cheaply (using private money), faster and returned to productive use.

To date, agreements between volunteers and the New York State Department of Environmental Conservation (DEC) have been reached at 79 sites. Several more agreements are expected in the near future.

These agreements will help DEC meet its remedial program objectives while also achieving private sector business development objectives.

The first voluntary cleanup agreement signed in New York City illustrates the many benefits that can be achieved through this innovative program. Under the agreement, Visy Paper Inc. has completed the removal of contamination from a site on Staten Island and is half-way through the construction of a \$250 million paper recycling plant on the site capable of recycling up to 550,000 tons of waste paper per year. This effort will reclaim a valuable resource from the waste stream, recycling it for productive reuse.

The Visy voluntary agreement went from initial discussions to a signed document in just 60 days. Visy completed site investigation and remediation in just over eight months, and then embarked on one of the largest industrial developments in New York City in the last several decades. Without the ability of our Voluntary Cleanups Program to act quickly, Visy would have taken its plant elsewhere.

Instead, the project is a success story that will create an estimated 400 permanent and 1,000 temporary construction jobs. It provides not

only environmental but also economic benefits to the metropolitan New York area.

The Pfizer Pharmaceutical site in Williamsburg that you visited this morning is another excellent example of not only what can, but what does happen when a State and a company work together on a voluntary cleanup. Thanks to the good faith efforts of this company, working in cooperation with DEC, an investigation was completed and the site cleaned up, all in less than one year. New Yorkers will have another option for employment through new commercial development at a former industrial site. We are pleased at Pfizer's decision to participate in New York's Voluntary Cleanups Program.

Unlike some other states, however, our program is not established in statute. Thus, while a release from CERCLA liability is as important to New York as it is elsewhere, we must discourage Congress from linking this release to a mandate that State programs must be legislatively created.

Brownfields Program

When industries abandon a contaminated industrial site, it often becomes a municipal liability. Many municipalities across New York have been saddled with the financial and environmental burden of abandoned, idled or under-used properties where expansion or redevelopment is complicated by real or perceived environmental contamination.

These abandoned sites, known as brownfields, can pose environmental, legal and financial burdens on a community and its taxpayers.

Municipalities have difficulty finding parties willing to purchase the properties, because they cannot obtain financing or fear of future liability issues. At the same time, fiscal restraints impede many municipalities from committing the funds necessary to remediate these properties.

In an effort to assist municipalities and energize the brownfield remediation program, Governor Pataki proposed and New Yorkers approved the Clean Water/Clean Air Bond Act of 1996. The Bond Act

authorizes \$200 million for the funding of the investigation and cleanup of Environmental Restoration Projects (the designated term for these brownfields) -- the highest level of funding for brownfields of any state in the Nation.

The Brownfields Program will provide grants to municipalities for reimbursement of 75 percent of eligible costs for the investigation and/or cleanup of municipally-owned contaminated properties.

The sites will be cleaned up to the same level of protection as required under the State Superfund program. These properties may then be marketed for redevelopment by the municipality or used by the municipality for a variety of activities including industrial, commercial or public use.

In recognition of the importance of liability releases to the effective functioning of this program, language is included in the Clean Water/Clean Air Bond Act's Environmental Restoration Program to limit liability. This language specifies that a municipality or successor in title to a property will not be liable to the State or any person for statutory or common law causes of action as a result of the presence of hazardous substances on the property before the cleanup. Liability

would be maintained if the municipality or successor in title fails to comply with the terms of its contract with the State to clean up the site; fraudulently demonstrates that cleanup levels were reached; or changes the use of the property from that use intended when the State agreed to the brownfields cleanup. We encourage you to pursue similar language in Congress, to ensure that federal releases from liability are obtained, and are consistent with the State's criteria.

The Brownfields Program is expected to remediate a number of contaminated sites bringing viable businesses into communities across the State. This in turn will increase tax revenues and employment opportunities to these communities.

And, important to New York State than financial assistance is the federal release from liability mentioned above. I can assure you that, across this State, many companies are willing to cleanup industrial sites. Municipalities also are anxious to remediate sites under their jurisdiction.

And we need help from Congress to ensure that this can happen, through amendments to CERCLA and RCRA.

Recommendations

New York has gained a great deal of experience with respect to the effective remediation of sites that could be instructive as Congress contemplates CERCLA reform.

In recognition of the Subcommittee's interest in removing federal barriers to effective hazardous waste site cleanups, I will address some issues that affect NPL site cleanups overall, as well as brownfield-specific concerns.

In New York State, we have enhanced our remedial efforts by broadly and comprehensively involving a broad range of affected interests in individual site cleanups. Commitment to cleanup must be accompanied by a spirit of cooperation and partnership among government, business, environmental groups, affected individuals and responsible parties.

We have taken a flexible approach to site remediation. We seek remedial solutions that promote effective human health and environmental protection, but which also promote timeliness, cost effectiveness and innovation. Increasingly we are employing

remediation that promotes re-use of sites, natural resource values, recreational opportunity and a healthy economy.

We have obtained an impressive return on the State's remedial dollar. New York State has remediated hundreds of sites successfully.

Many of these sites have complex contamination problems, while carefully controlling costs and spending, and achieving a substantial financial commitment from responsible parties.

For voluntary cleanup/brownfields programs to really succeed, the federal government must undertake common sense reforms similar to the states. There have been numerous brownfields bills introduced in Congress over the past few years. Unfortunately, most of them have not addressed the key things that the states need from Congress to complement our land recycling and voluntary cleanup programs, thereby allowing them to reach their maximum potential for environmental cleanup and economic revitalization.

From New York's perspective, the key items are: (1) a release from federal liability at state brownfield sites, as discussed above; and (2) a waiver of federal permitting requirements at these sites.

Voluntary cleanup and brownfield sites simply do not belong under the shadow of Superfund liability. CERCLA was not written to address these sites; it was written to address a limited number of highly contaminated sites that present emergency situations, imminent hazards and significant threats to human health and the environment, and where no private resources are available. This is generally not the case with brownfields or land recycling sites.

We need a federal release of liability at state sites to combat the lingering perception by developers that federal liability is a real concern at the typical state brownfields site -- one that is not on the Superfund list and has no outstanding RCRA corrective action order.

Second, there needs to be a waiver of federal permitting requirements at voluntary cleanup/brownfields sites being addressed under a state program. In asking for this waiver, New York can assure Congress that discharges to the air and water are fully regulated by our state regulatory program, and persons cleaning up sites in our state system have to meet all of our applicable emission and discharge limitations, both during cleanup and thereafter.

I would like to point out that other, common sense amendments to CERCLA also must be undertaken by the 105th Congress. In particular, I am concerned about the slow pace of cleaning up sites federal Superfund sites. State cleanup of federally-delegated sites would be cheaper and faster than occurs now.

It's important to note that New York enjoys an excellent working relationship with the Environmental Protection Agency. EPA has been our partner in addressing National Priority List sites -- of which 88 are located in New York State -- and in performing numerous removal actions across the State. Certainly, EPA's quick action at the Radium site that you visited this morning is a good example of where EPA can be most effective. New York State does not have the statutory authority to remediate this type of site. Without EPA's commitment to emergency measures to clean up this site, the Borough of Queens could have been in serious jeopardy.

But for many sites, the states, rather than EPA, can act more quickly and effectively. Thus, New York advocates providing states the option to select either the delegation or authorization model for state management of federal Superfund Site cleanups.

Congress should ensure that states receive adequate funding for managing NPL site remediations. States should be allowed to manage site cleanups with minimum federal intervention.

The federal government can assist states like New York by recognizing and supporting creative and flexible initiatives such as our Voluntary Cleanup and Brownfields programs.

Conclusion

New Yorkers are proud of the accomplishments we have made in tackling the toxic legacy of hazardous waste sites. We have made great progress. We have learned many lessons and have applied that knowledge as we continuously strive to improve our remediation program. We are not, however, content with past successes, but recognize the critical need to continue to meet the challenges posed by hazardous waste sites. We are committed to protecting and enhancing New York's natural resources, the health of our citizens and our economic vitality.

In New York State, we have stopped looking backward. We are looking now to the future: a future that preserves our bountiful green fields, and that has redeveloped our brownfields to exciting new uses.

I appreciate the opportunity that you have given the State of New York to discuss the progress we have made, and I encourage you to continue this dialogue. Thank you.